

ERVIN D. MULL
PAUL EICHNOLZ

IBLA 80-900

Decided August 31, 1981

Appeal from decisions of the Alaska State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. AA-24999, AA-25090, and AA-28065.

Affirmed in part; reversed in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

Where, on or before Oct. 21, 1979, a mining claimant files proof of assessment work performed for the preceding assessment year for a claim located on or before Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, the claimant has complied with both the statutory and regulatory requirements for filing assessment work.

APPEARANCES: Herbert A. Ross, Esq., Anchorage, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Ervin D. Mull and Paul Eichnolz have appealed from decisions of the Alaska State Office, Bureau of Land Management (BLM), dated July 25, 1980, declaring three placer mining claims abandoned and void pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a).

On April 6, 1979, a notice of location and affidavit of assessment work for the year ending September 1, 1978, were filed with BLM for the Knight Association claim (AA-24999). The claim had been

located on September 29, 1909. On April 24, 1979, a notice of location but no affidavit of assessment work for the year ending September 1, 1978, for the Bench Claim No. 1 (AA-25090), located on June 12, 1950, was filed with BLM. On August 17, 1979, a notice of location and affidavit of assessment work for the year ending September 1, 1978, were filed with BLM for the North Star claim (AA-28065). The claim had been located on June 5, 1968. No affidavits for the 1979 assessment year were received by BLM on or before October 22, 1979, for any of the three claims. BLM declared the claims abandoned and void for failure to file 1979 affidavits of assessment work or notices of intention to hold. We reverse as to the Knight Association and North Star claims and affirm as to the Bench Claim No. 1.

[1] Section 314(a), 43 U.S.C. § 1744(a) (1976), provides:

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter * * * [f]ile for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim[,] * * * an affidavit of assessment work performed thereon, * * *.

The statute requires only that a proof of assessment work be filed within the 3-year period following October 21, 1976, and each year following the initial filing. When appellants filed their affidavits of assessment work in April 1979 and August 1979 for the Knight Association and North Star claims, they were in compliance with the statutory requirement. See Perry L. Johnson, 57 IBLA 20 (1981).

The applicable regulation, 43 CFR 3833.2-1(a), provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added].

Appellants were also in compliance with the regulation when they filed in 1979 for those two claims. At the time they filed, the preceding assessment year was the 1978 assessment year and the evidence filed by appellants was for the 1978 assessment year. See Perry L. Johnson, supra. Thus, appellants' filings conformed to both the statutory and regulatory mandates. BLM improperly declared those claims abandoned and void for failure to file a 1979 proof of assessment work or notice of intention to hold on or before October 22, 1979.

However, the Bench Claim No. 1 was properly declared abandoned and void because appellants failed to file any evidence of assessment work for that claim on or before October 21, 1979. See 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.4(a). In fact, no evidence of assessment work was ever filed for the Bench Claim No. 1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Bruce R. Harris
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

